

**REMARKS**

Applicants have thoroughly considered the remarks in the September 4, 2009 Office action. Applicants have amended Claims 1, 6, 7, 8, 12, 15, 17, 22, 23, 24, 28, 31, 32 and 35-42 in this Amendment. Claims 2-5, 18-21, and 33-34 have been canceled. Claims 43-45 have newly added. Claims 1, 6-17, 22-32, and 35-45 are pending.

**I. Rejection of Claims 1, 3, 6-16, 32 and 34-42 Under 35 U.S.C. § 101**

Claims 1, 3, 6-16 and 42 stand rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

Applicants have amended claim 1 to add "by a processor" to certain operations to tie these operations to hardware. Claim 3 has been canceled. Claims 6-16 and 42 depend from and further limit claim 1. Reconsideration and withdrawal of the rejection of claims 1, 6-16 and 42 under 35 U.S.C. 101 are respectfully requested.

Claims 32, 34-41 stand rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. In particular, the Office Action alleges that a "computer readable medium" as recited in claims 32 and 34-41 is not defined in the specification as being hardware or software.

Applicants have amended claims 32, 35-41 to replace the "computer readable medium" with "computing system with a processor". Support for this amendment may be found at least in at ¶ 0066 in the present application: the system "includes a processor, which may be any type of general purpose or special

purpose computing system". In addition, in ¶ 0067, the present application provides that the "processor includes computer-executable instructions to receive a number of inputs". Claim 34 has been cancelled. Reconsideration and withdrawal of the rejection of Claims 32, 35-41 under 35 U.S.C. 101 are respectfully requested.

**II. Rejection of Claims 1, 3, 6-17, 19, 22-32, and 34-41 Under 35 U.S.C. 103(a)**

Claims 1, 3, 6-17, 19, 22-32 and 34-41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,272,110 to Tunncliffe et al. (hereinafter referred to as "Tunncliffe"), in view of US patent No. 6,209,033 to Datta et al. (hereinafter referred to as "Datta"), in further view of US patent No. 6,889,204 to Sanada et al. (hereinafter "Sanada"). Applicants respectfully disagree.

Tunncliffe discloses a method and apparatus for managing part of a communications network. Datta discloses that the network capacity evaluation and planning is performed based upon the traffic across the links of the network.

The Office Action admits that "Tunncliffe and Datta do not specifically teach determining at each of the future times a lead time for adding a product for applying the determined DCNC to the network, wherein the lead time indicates an amount of time needed for delivery and installation of purchased DCNC".

Sanada discloses a method and apparatus for rental storage system to reduce the initial investment of a user of a storage system. It further discloses that the storage system addition requires supplying and installation of disk space.

In contrast, claims 1, 6-8, 12, 15, 17, 22-24, 28, 31-32 and 35-42 recite "bandwidth capacity". As appreciated by one of ordinary skill in the art, network bandwidth capacity changes and storage system changes are different technical concepts. Storage system changes as disclosed in the cited art require disk space allocations, and the installation and delivery of hard drive may be involved. In contrast, the network bandwidth capacity changes recited in the claims of the present application are directed to bandwidth adjustments. For example, the delivery and installation of purchased network capacity may include the network vendor adding or deleting routers or gateways in a network. It is not reasonable for one of ordinary skill in the art to infer determining at each of the future times a lead time for adding a product for applying the determined total **network bandwidth capacity** to the network as recited in claim 1 of the present application based on the cost reduction network storage system disclosed by Sanada, Tunnicliffe and Datta. Accordingly, Applicants submit that 1, 6-8, 12, 15, 17, 22-24, 28, 31-32 and 35-42 are patentable over the cited art.

Further, Claim 1, 17 and 32 have been amended to recite recite *"applying the determined DCNC in advance of each of the future times based on the lead time determined with respect to the future times"*. None of the cited art teaches or suggests such limitations.

For at least these reasons, Applicants submit that independent Claims 1, 17, and 32 are patentable over the cited art. To the extent that independent Claims 17 and 32 recite limitations similar to the limitations recited in Claim 1, independent Claims 17 and 32 are believed to be patentable for at least the same reasons that Claim 1 is believed to be patentable.

Claims 3, 19 and 34 have been canceled. Claims 6-16 depend from and further limit Claim 1, and are patentable for at least the same reasons that Claim 1 is patentable. Thus, Applicants request that the rejection of Claims 6-16 be removed.

Claims 22-31 depend from and further limit Claim 17, and are patentable for at least the same reasons that Claim 17 is patentable. Thus, Applicants request that the rejection of Claims 22-31 be removed.

Claims 35-41 depend from and further limit claim 32, and are patentable for at least the same reasons that claim 32 is patentable. Applicants request that the rejection of claims 35-41 be removed.

In addition, applicants have added claims 43, 44 and 45 which are directed to the future time being on "*fixed time intervals*." Support for this amendment may be found at least in ¶ 0039 of the present application. Claims 43-45 distinguish from the art at least in that while Tunnicliffe discloses the prediction of network performance at a future time, none of the cited art teaches or suggests that the future times are on fixed time intervals. The fixed time interval prediction as recited in claims 43-45 in the present application can provide, for example, more accurate prediction by reducing the impacts of sporadic high or low network traffic at particular future times. In addition, the network users can also align such fixed future times with their business time schedules, such as fiscal periods, application maintenance periods etc., to effectively adjust the network capacity.

### **III. Rejection of Claim 42 Under 35 U.S.C. 103(a)**

The rejection of Claim 42 under 35 U.S.C. 103(a) as being unpatentable over Tunnicliffe, Datta and Sanada, in further view

U.S. Publication No. 2004/0202160 to Westphal (hereinafter referred to as "Westphal") is respectfully traversed.

Westphal discloses a system and method that provides virtual mobility to an application by using a mobile router tunneling protocol. It particularly discloses the load balancing between the two identical networks based on the network load.

In contrast, claim 42 has been amended to recite "a monetary cost measure". Support for this amendment may be found at least in ¶ 0049 of the present application which provides that the invention "plan[s] a budget for" DCNC, "in particular ... determine[s] a projected cost measure of DETERMINED CHANGE IN NETWORK CAPACITY". Westphal does not teach or suggest "*a monetary cost measure of the determined change in network bandwidth capacity*" as recited in claim 42. It is not reasonable to determine a monetary cost of the network bandwidth capacity change (present disclosure) by merely knowing the technical performance of the network (Westphal).

Thus, Applicants respectfully request that the rejection of claim 42 under 35 U.S.C. § 103(a) be removed.

### **Conclusion**

Applicants submit that the claims are allowable for at least the reasons set forth herein. Applicants thus respectfully submit that Claims 1, 6-17, 22-32 and 35-45 as presented are in condition for allowance and respectfully request favorable reconsideration of this application.

Although the prior art made of record and not relied upon may be considered pertinent to the disclosure, none of these references anticipates or makes obvious the recited aspects of the invention. The fact that Applicants may not have specifically traversed any particular assertion by the Office

should not be construed as indicating Applicants' agreement therewith.

The Commissioner is authorized to charge Deposit Account No. 01-2384 for any fees incurred during the pendency of this application.

Respectfully submitted,

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